

CYPRUS MINES CORP.

IBLA 81-699

Decided July 20, 1981

Appeal from decision of Nevada State Office, Bureau of Land Management (BLM), declaring unpatented millsites abandoned and void. N MC 105301 and 105302.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Millsites: Generally

A decision by the Bureau of Land Management that unpatented millsite claims are abandoned and void because no notice of intent to hold was filed with the recorded notice of location will be reversed. There is no requirement either in the statute or regulations for such filing.

APPEARANCES: Craig A. Gardiner, Esq., Englewood, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On October 9, 1979, Cyprus Mines Corp. filed copies of 22 certificates of location for the "Oasis Mine" claims, including 20 lode mining claims and two millsites, in the Nevada State Office, Bureau of Land Management (BLM). Serial numbers N MC 105301 and 105302 were assigned to the Rosamelia and White Top millsites, respectively. The mining claims were assigned numbers N MC 105303 to 105322. The claims had been located between 1927 and 1942.

By decision of October 23, 1980, BLM declared the lode mining claims abandoned and void because no proof of labor or notice of intent to hold had been filed by October 22, 1979, as required by the Federal

Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). That decision apparently was not appealed. 1/

On October 2, 1980, notice of intent to hold was filed with BLM for the assessment year ending September 1, 1980, for the Rosamelia and White Top millsites, and for the 20 lode mining claims. By decision of April 24, 1981, BLM declared the millsites abandoned and void because no intent to hold or proof of labor had been received by BLM by October 22, 1979. 2/ This appeal followed.

Appellant argues for reversal of the BLM decision on the ground that it is not supported by FLPMA. Appellant contends that assessment work is not required on millsites, either by the United States mining laws or by FLPMA; that FLPMA requires evidence of assessment work or notice of intention to hold by October 22, 1979, only for mining claims; that the owner of a millsite must file a notice of intent to hold the millsite on or before December 30 of each year following the year of recording with BLM, and that Cyprus was not required to file a notice of intent to hold the millsites until December 30, 1980. We agree.

Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), requires the owner of unpatented lode or placer mining claims to file annual proof of assessment work or notice of intent to hold the claims; 314(b) requires the owner of unpatented lode or placer mining claims, or millsites or tunnel sites to file a copy of the official record of the notice of location; 314(c) provides that failure to file such instruments as required by (a) and (b) shall be deemed conclusively to constitute abandonment of the mining claim, millsite or tunnel site. The requirement for notice of intent to hold a millsite is imposed only by regulation, and only for each calendar year following date of recordation with BLM. 43 CFR 3833.2-1(d), see Feldslite Corp. of America, 56 IBLA 78 (1981).

In Topaz Beryllium Corp. v. United States, No. 79-2255 (10th Cir. May 22, 1981), the Court held that the Secretary may not deem a mining claim abandoned merely because the supplemental filings required by 43 CFR Part 3833 -- and not by statute -- are not made.

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1/ It is well established that one who fails to appeal timely from an adverse decision loses his rights in the subject matter, even though the decision was erroneous. E.g., Betty Ketchum, 67 I.D. 40 (1960); Eugene Bernardini, 62 I.D. 231 (1955); Edward Christman, 62 I.D. 127 (1955); C. T. Hegwer, 62 I.D. 77 (1955).

2/ By letter of April 24, 1981, BLM advised Cyprus that the Rosamelia and White Top millsites had been declared null and void by decision of October 23, 1980, and as no appeal had been taken, the decision was final and the cases had been closed. No such decision is contained in the record before us.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Nevada State Office, Bureau of Land Management, dated April 24, 1981, declaring the Rosamelia and White Top millsites abandoned and void is reversed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge